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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,474

10/24/2003

Jadwiga Malgorzata Bialek

F6176(V)

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04/08/2008

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/693,474	Applicant(s) BIALEK ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,8-11,14,18 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3 and 9-11 is/are allowed.
- 6) ☒ Claim(s) 8,14,18 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 24, 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The rejection of the claims over Hercules in view of Fischer as further evidenced by Lowe and Schwartzberg has been dropped in response applicants' amendments to the claims. Fischer (article) does not suggest that the use of citrus fiber results in a product with the viscosity of the claims (Figure 2). Also applicant has provided a declaration showing the viscosity of Hercules and Hercules in view of Fischer.

Claims 8 and 20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8 and 20 depend from cancelled claims. Correction is suggested.

Claims 24-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1, 3 and 9-11 are allowed.

Claim 8 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wintersdorff (3,676,157) in view of Chen (5,817,381).

Wintersdorff discloses a salad dressing having the viscosity of the claims (see claim 4). The product contains oil, water, emulsifier and acid in the amount of the claims. The claims appear from Wintersdorff in the recitation of the inclusion of an insoluble fiber. Chen teaches cellulose fibers for use in foods (see Table 2). In particular cellulose is described as a thickening agent, a fat substitute and emulsion stabilizer for salad dressing. It would have been obvious to one of ordinary skill in the art to fortify the salad dressing of Wintersdorff with the fibers of Chen in order to maintain and control

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the viscosity of the salad dressing. It is appreciated that the fiber dimensions are not mentioned but it would have been obvious to control the fiber dimensions of Chen in order to provide a smooth tasting product. It is appreciated that egg is not mentioned but egg is known in the art to be included in mayonnaise. To prepare mayonnaise instead of salad dressing would have been an obvious matter of choice with regard to the particular dressing desired.

Claims 14, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGlynn (6,322,829) in view of Chen (5,817,381).

McGlynn discloses savory fillings containing oil or fat, water and emulsion stabilizers that include protein (see column 3, lines 48-49 and line 59 and column 5, lines 13-25. The viscosity of the composition is shown at column 6, lines 19-25. The claims appear from McGlynn in the recitation of the inclusion of an insoluble fiber. Chen teaches cellulose fibers for use in foods (see Table 2). In particular cellulose is described as a thickening agent, a fat substitute and emulsion stabilizer for salad dressing. It would have been obvious to one of ordinary skill in the art to fortify the salad dressing of McGlynn with the fibers of Chen in order to maintain and control

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the viscosity of the salad dressing. It is appreciated that the fiber dimensions are not mentioned but it would have been obvious to control the fiber dimensions of Chen in order to provide a smooth product.

Claims 14, 20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gonzalez (6,146,672) in view of Chen (5,817,381).

Gonzalez discloses water in oil emulsion fillings for dough that have the viscosity of the claims (column 3, lines 26-27) and that are made of fat, water and emulsifier (Table 4). The claims appear from Gonzalez in the recitation of the inclusion of an insoluble fiber. Chen teaches cellulose fibers for use in foods (see Table 2). In particular cellulose is described as a thickening agent, a fat substitute and emulsion stabilizer for salad dressing. It would have been obvious to one of ordinary skill in the art to fortify the salad dressing of Gonzalez with the fibers of Chen in order to maintain and control the viscosity of the salad dressing. It is appreciated that the fiber dimensions are not mentioned but it would have been obvious to control the fiber dimensions of Chen in order to provide a smooth product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

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